STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY PERRINE,

Plaintiff-Appellant,

v

LOUIS DOWNING,

Defendant-Appellee.

UNPUBLISHED
April 27, 2006

No. 260105
Midland Circuit Court
LC No. 04-007256-DP

Before: White, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by right from the order of the circuit court regarding retroactive child support. We affirm.

Plaintiff, Kimberly Perrine, and defendant, Louis Downing, are the biological parents of Tyler Louis Perrine, who was born on November 13, 1991. Plaintiff and defendant never married each other. Nevertheless, defendant acknowledged that Tyler is his biological son and provided medical insurance and limited financial support with some regularity. Defendant did this even though no court had determined that defendant was Tyler's father or ordered defendant to pay child support.

On December 8, 2003, defendant ceased all support of Tyler. On April 6, 2004, over 12 years after Tyler was born, plaintiff sued defendant to establish paternity and to obtain child support, both prospective and retroactive to Tyler's birth. On December 13, 2004, the court awarded child support for $615 per month, as the Friend of the Court had determined for the interim order. The circuit court also order ordered retroactive support in the same amount, but only to December 8, 2003, when defendant had stopped providing support. The circuit court reasoned that, because defendant had provided limited support with some regularity for Tyler until December 8, 2003, it would be unfair to require retroactive support back to Tyler's birth. The circuit court also noted that plaintiff could have sued for child support at any time during the more than 12 years since Tyler's birth but did not do so.

Plaintiff appeals, arguing that under MCL 722.717 the circuit court was required to enter an order of filiation awarding retroactive child support from the date of Tyler's birth and lacked discretion no to do so. We disagree.

Based on the version of MCL 722.717 under which this case was decided,[1] the trial court has discretion to award retroactive child. The statute provides:

> An order of filiation entered under subsection (1) shall specify the sum to be paid weekly or otherwise, as prescribed . . . in the support and parenting time enforcement act . . . until the child reaches the age of 18. . . . [T]he court may also order support for a child after he or she reaches 18 years of age. In addition to providing for the support of the child, the order shall also provide for the payment of the necessary expenses incurred by or for the mother in connection with her confinement, for the funeral expenses if the child has died, for the support of the child before the entry of the order of filiation, and for the expenses in connection with the pregnancy of the mother or of the proceedings *as the court considers proper*. (Emphasis added.)

Section 717(2) uses the mandatory language, "the order shall also provide for," to require the inclusion of five specific items of expense in an order of filiation. All five items appear in one sentence. That sentence ends with the clause, "as the court considers proper." Plaintiff claims that the clause modifies only the immediately preceding two expenses specified in the prepositional phrase, "for the expenses in connection with the pregnancy of the mother or of the proceedings." Defendant claims that the clause modifies all five preceding expenses in the sentence. However, we find that grammatically the phrase, "as the court considers proper," is an adverbial modifier. As such, it would properly modify a verb, another adverbial modifier, or an adjectival modifier. Thus, we find it does not directly modify the last compound item or any or all of the items in the list. Rather, it directly modifies the main verb of the sentence, "the order *shall* also *provide* for**"** (emphasis added), by specifying how, i.e., the manner or measure by which, the order of filiation "shall provide" for each of the several specified expenses.

If, as plaintiff contends, the clause applies only to the last two items, then the determination of only the expenses of the pregnancy or the proceedings would be within the court's discretion. Such a reading implies that the other items are outside of the court's discretion. This reading is awkward and elliptical because the other items are also similarly variable expenses that presumably, in the absence of any other specified arbiter, require a judicial determination of their proper amounts.

We recognize that applying the adverbial clause, "as the court determines," to the main verb violates the general "proximity rule," which requires a modifier typically to refer to its last

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[1] Under the relevant version of MCL 722.717, child support is only available from the date of the filing of the proceedings, if the child support proceedings are first commenced more than six years after the birth of the child, unless (1) the father acknowledged his paternity as provided by statute or (2) the father made one or more payments to support the child during the six-year period and the paternity proceedings are commenced within six years of the latest payment. That provision was amended to eliminate these two exceptions, effective October 1, 2004, two days after the hearing on this matter. The trial court acknowledged the imminent amendment but resolved the issue under the then current version.

antecedent or to its nearest referent. But, here, we find that the natural reading and sense of this particular sentence is best served by having the adverbial clause qualify how, i.e., the manner or measure by which, the filiation order provides for each of the specified variable expenses and not merely the final two expenses. Thus, we conclude that this earlier version of MCL 722.717(2) grants the circuit court discretion to fashion an order of filiation to provide for the five specified items of variable expense, "as the court considers proper."

Affirmed.

/s/ Helene N. White
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot